

### **REMARKS**

The above-referenced application has been reviewed in light of the Office Action dated November 28, 2007. Claims 1 and 4-18 are currently pending. By the present Amendment, Applicant has amended independent claims 1 and 16. Applicant respectfully submits that these amendments add no new matter, are fully supported by the specification, and are allowable over the cited references of record. In light of the amendments made herein and the following remarks and arguments, early and favorable reconsideration and allowance of this application are earnestly solicited.

In the Office Action, claims 14, 15, 17, and 18 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. In particular, it was argued that recitation of a system “wherein relative movement between the cannula and the expanded inflatable bladder retracts tissue from one of the opposed surfaces” in claim 14 and a system “wherein a portion of the surgical instrument extends distally of the inflatable member, inflation of the inflatable member fixes the portion of the surgical instrument relative to body tissue surrounding the retractor” in claims 15, 17, and 18 lack sufficient basis in the original disclosure. Support for these claim recitations can be found, at least on, page 14, lines 2-8 of the original disclosure where it is stated that:

[t]he bladder 46 expands transversely, retracting the tissues 42 transversely and creating a working space 34. By axial manipulation of the shaft 44, the bladder 46 is movable either toward the end of the scope 40 in the direction as indicated by the arrow 48, or away from the end of the scope 40 as indicated by the arrow 50, as desired. Such manipulation of the retractor can selectively move and place the adjoining body tissues where the surgeon wants them to enable better use of the scope 40 by the surgeon. (Emphasis added).

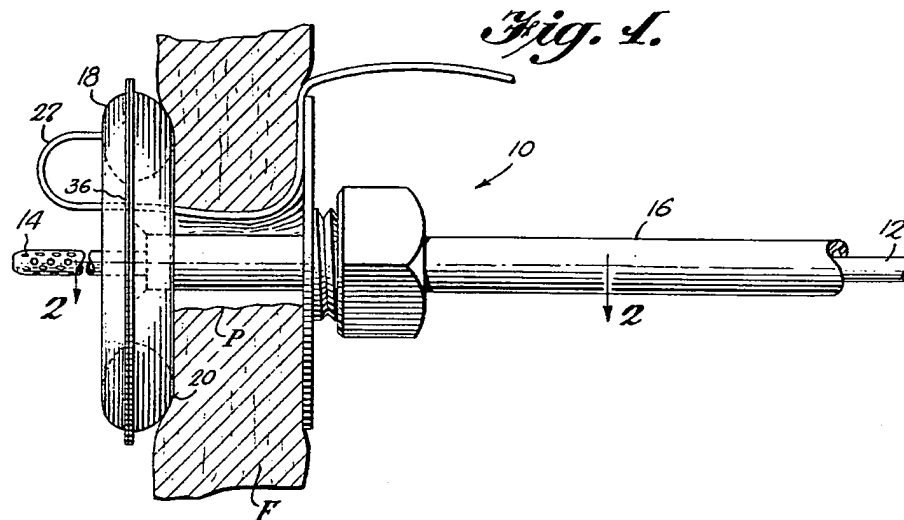
Applicant respectfully submits that the original disclosure provides sufficient basis for the subject matter of claims 14, 15, 17, and 18. Accordingly, Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. § 112, first paragraph.

Claims 14, 15, 17, and 18 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. It was asserted that claims 14, 15, 17, and 18 are confusing and inaccurate for the reasons set forth above regarding the rejection under 35 U.S.C. § 112, first paragraph. As previously stated, Applicant respectfully submits that at least the section of the original disclosure excerpted above provides sufficient basis for subject matter of claims 14, 15, 17, and 18. Accordingly, Applicant respectfully submits that claims 14, 15, 17, and 18 are not indefinite, and respectfully requests withdrawal of the rejection under 35 U.S.C. § 112, second paragraph.

Claims 1, 4-9, and 11-18 were rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 3,253,594 to Matthews *et al.* (hereinafter “Matthews”). Applicant respectfully submits, however, that Matthews fails to disclose or suggest each and every element of the systems recited in claims 1, 4-9, and 11-18.

As amended, independent claims 1 and 16 each recite a system including *inter alia*, a retractor having a shaft with inner and outer walls and an inflatable bladder attached to its distal end, “wherein the inflatable bladder is inflated by fluid received through a second lumen defined between the inner and outer walls of the shaft.”

Matthews relates to a peritoneal cannula 10 insertable through a perforation P formed in a patient’s tissue and including a cannula 16 having an inflatable balloon 18 connected to a distal end thereof. (*See* col. 2, lines 54-60). The balloon 18 is inflated by liquid communicated thereto through a lumen 27. (*See id.* at lines 71-72). As seen in FIG. 1 below, the lumen 27 is disposed externally of the cannula 16.



In contrast, independent claims 1 and 16 each recite, *inter alia*, a cannula having inner and outer walls and a retractor including a shaft and an inflatable bladder, “wherein the inflatable bladder is inflated by fluid received through a second lumen defined between the inner and outer walls of the shaft.” (Emphasis added).

For at least this reason, Applicant respectfully submits that Matthews fails to disclose or suggest each and every element of the systems recited in amended independent claims 1 and 16, and therefore, that amended independent claims 1 and 16 are allowable over Matthews. As claims 4-9, 11-15, and 17-18 depend either directly or indirectly from claims 1 and 16, for at least the reasons set forth above with respect to claims 1 and 16, Applicant respectfully submits that claims 4-9, 11-15, and 17-18 are also allowable over Matthews.

Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Matthews. While it was acknowledged that Matthews fails to disclose a viewing scope, it was asserted that Matthews discloses using a device to take photographs of a patient’s interior portions, and that it is old and well known in the art that a viewing scope may be used to this end.

As previously discussed, Matthews fails to disclose or suggest a cannula having inner and outer walls and a retractor including a shaft and an inflatable bladder, “wherein the inflatable

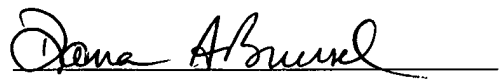
bladder is inflated by fluid received through a second lumen defined between the inner and outer walls of the shaft" as recited in claim 1. (Emphasis added).

Even if it is assumed that it would have been obvious to one of ordinary skill in the art to use a viewing scope in conjunction with the Matthews device, the incorporation of a viewing scope fails to cure the deficiencies of Matthews.

Accordingly, Applicant respectfully submits that Matthews fails to suggest each and every element of the system recited in claim 10, and therefore, that claim 10 is allowable over Matthews.

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims pending in the application, namely claims 1 and 4-18 are in condition for allowance. Should the Examiner desire a telephonic interview to resolve any outstanding matters, the Examiner is sincerely invited to contact the undersigned at (631) 501-5713.

Respectfully submitted,

  
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